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September 23, 1983

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Mr. David Hartman
Office of State Planning
2 1/2 Beacon Street
Concord, New Hampshire 03301

Re: Data Security

Dear Mr. Hartman:

This is in response to your memorandum of July 12, 1983, concerning the applicability of RSA 91-A, the Right to Know Law, to data collected in a statewide inventory of endangered plant and animal species. Based on your memorandum and my conversations with Margaret Watkins of your office, it is my understanding that the Office of State Planning is concerned that the disclosure of the location of certain endangered species could be counter productive to preservation efforts. Consequently, you have asked whether the Office of State Planning must disclose to the public certain data relating to endangered species.

RSA 91-A:4 gives every citizen the right to inspect the public records of a state agency during regular business hours. RSA 91-A:5 defines certain records which are exempted from the disclosure requirement. These records include those "pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute invasion of privacy." Although the statute does not define the term "public record" as it is used in RSA 91-A:4 or the word "confidential" as it is used in RSA 91-A:5, the court has. Mans v. Lebanon School Board, 112 N.H. 160, 163 (1972).

As applied to data on endangered species collected by the Office of State Planning, RSA 91-A would require the disclosure of such



Mr. David Hartman
September 23, 1983
Page Two

information unless a substantial state interest justifies non-disclosure. Your memo does not define the state interest that would be served by withholding such information from the public or what adverse consequences would result if such information is disclosed. Absent such information, I cannot give you a final determination as to whether the data must be disclosed. However, based on the statements contained in your memo, you construed these terms "with a view to providing the utmost information" to the public. It is my understanding that OSP is concerned that public disclosure of the location of endangered species would enable members of the public to locate sensitive habitats and damage them either intentionally or unintentionally. Unless OSP has specific information indicating that such damage is likely to occur, such a concern would be too tenuous and remote to outweigh the potential benefits of disclosure such as the use of the information for research and educational purposes, and access to unique natural resources by members of the public.

For these reasons, subject to the receipt of further information which would identify a significant state interest in withholding such information, we have tentatively concluded that OSP must disclose such data to the public upon request. The requirements of RSA 91-A apply equally to OSP and DRED. Please do not hesitate to call or write if you have any further questions or information regarding this matter.

Yours truly,

Eve H. Oyer

Eve H. Oyer
Assistant Attorney General
Environmental Protection Division

EHO/clp

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